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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re LEAH G., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

MIGUEL G.,

Defendant and Appellant.

D049632

(Super. Ct. No. NJ013138)

APPEAL from an order of the Superior Court of San Diego County, Harry M.  
Elias, Judge. Affirmed.

Miguel G. appeals an order denying his request for reunification services. He contends delay in establishing his paternity of his daughter, Leah G., unfairly hindered his chance to participate in reunification services and weakened his ability to retain his parental rights. We affirm the order.

## FACTUAL AND PROCEDURAL BACKGROUND

On June 5, 2005, the San Diego County Health and Human Services Agency (the Agency) removed one-year-old Leah from her mother, Juliana A.'s, custody and petitioned on Leah's behalf under Welfare and Institutions Code section 300, subdivisions (a) and (b)<sup>1</sup> because Juliana struck Leah with a belt, threatened to kill herself and exposed Leah to domestic violence.<sup>2</sup> Juliana said Miguel is Leah's father, but he had seen Leah only twice and had never supported her. She said she left Miguel when she was pregnant with Leah because he did not want to work, was in and out of jail, and wanted nothing to do with the baby.

The social worker reported Miguel was incarcerated at the California Correctional Center in Susanville (Susanville). On June 30, 2005, the court appointed counsel for him. He was produced at the next hearing on August 4 and requested a paternity test. The court authorized testing be conducted at the jail and, with Miguel's agreement, ordered him to remain there for the test. However, by September 7, Miguel still had not had a paternity test. The court ordered he be returned to Susanville and authorized the testing be done there. Juliana submitted to the allegations of the petition, the court found them true, declared Leah a dependent child, ordered services for Juliana and placed Leah with a relative.

On February 21, 2006, the court confirmed the order for paternity testing.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

<sup>2</sup> The domestic violence incident involved Juliana and her boyfriend, not Miguel.

Miguel had a paternity test in early April 2006 at Susanville. It showed he is Leah's biological father. At the May 1 six-month review hearing, the court received the test results into evidence. Miguel requested services, and the court granted a continuance for the Agency to consider services for him.

At the following hearing on July 17, 2006, Miguel waived his right to appear. His counsel stated he wanted services. The court ordered the Agency to evaluate what would be an appropriate case plan and whether services should be offered. The next hearing was set for July 31.

On July 31, 2006, the court set an order to show cause hearing for August 3 because the Agency had not provided information about whether it supported providing services to Miguel. Subsequently, the Agency recommended no services be offered. It reported Miguel was scheduled to be released in December.

At the next hearing on September 11, 2006, the court denied Miguel's request for services on the basis that he was in custody and there was insufficient time for him to complete services before the 18-month date on December 4.

## DISCUSSION

Miguel contends the unwarranted delay in establishing his paternity unfairly diminished his opportunity to retain his parental rights. He argues until the paternity test established that he is Leah's biological father he did not have standing to receive services, which were essential to allow him the opportunity to preserve his parental rights.

However, Miguel forfeited this argument by not raising it in juvenile court. "A party forfeits the right to claim error as grounds for reversal on appeal when he or she

fails to raise the objection in the trial court." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.) A "reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] [¶] Dependency matters are not exempt from this rule." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) Forfeiture applies to claims of statutory error and to claims of violations of fundamental constitutional rights. (*In re Seaton* (2004) 34 Cal.4th 193, 198.)

Miguel did not argue in juvenile court that there was undue delay in establishing his paternity of Leah or that the delay prejudiced his right to request services. Because, although he was represented by counsel, Miguel did not argue the issue in juvenile court, we conclude he has forfeited it on appeal.

Moreover, Miguel has not shown he was denied due process. "[D]ue process requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' [Citation.]" (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418.) "The essence of due process is fairness in the procedure employed . . . ." (*Ingrid E. v. Superior Court* (1999) 75 Cal. App.4th 751, 757.) Miguel had reasonable notice and the opportunity to be heard. He has not shown unfairness.

In addition, substantial evidence would have supported denying services to him even had his paternity been established in a more timely manner. Section 361.5, subdivision (a) provides that upon a declaration of paternity a juvenile court may order services for the biological father if the court determines the services will benefit the child.

Miguel made no showing that offering reunification services to him would be of any benefit to Leah. They did not have a parent-child relationship. Juliana told the social worker she left Miguel when she was pregnant with Leah because Miguel was not interested in the baby, he did not want to work to support them, and he had been in and out of jail. He was incarcerated during the entire dependency period and his expected release date was not until December 2006, when the 18-month reunification period would end. Had his paternity of Leah been established earlier, he still would have needed time to engage in services and establish a relationship with Leah before he could seek having her placed with him.

Section 361.5, subdivision (e)(1) states reasonable services must be offered to an incarcerated parent unless the court determines the services would be detrimental to the child. In determining detriment, the court considers, inter alia, the child's age, the degree of bonding, the length of the sentence, the nature of the crime, and the detriment to the child if services are not offered. Even had Miguel's paternity of Leah been established at an earlier date, the court would likely have found offering services to Miguel would be detrimental to Leah because of her young age, her lack of any relationship with him, his failure to show he had the ability to be a parent to her, and the fact that his criminal lifestyle caused him to be incarcerated until the end of the 18-month reunification period.

Miguel argues his case is entirely different from *In re Zacharia D.* (1993) 6 Cal 4th 435, where the California Supreme Court affirmed orders denying custody and services to an alleged father who did not come forward for paternity testing until just before the 18-month hearing. He had no relationship with the child, would have needed

at least six months of services before he could be allowed to visit, was addicted to drugs and planned to marry the mother who had neglected the child. (*Id.* at pp. 441, 455.)

Miguel's situation is not so different. Miguel did not appear and ask for a paternity test until he was produced for a court hearing and Leah was 15 months old. He had no relationship with her, had seen her only twice, was incarcerated, would not be released until the end of the maximum dependency period, and made no showing of how he would care for her upon his release. In both cases, substantial evidence would support findings services would not be in the child's best interests.

Miguel argues his case is similar to that of *In re Julia U.* (1998) 64 Cal.App.4th 532, where a biological father had contacted the social worker to inquire about the child as soon as he learned he might be her father, but the juvenile court refused to appoint counsel until testing confirmed parentage, and it terminated services before the determination was made. (*Id.* at pp. 535-539.) The appellate court reversed the order terminating parental rights and reunification services. It opined the social services agency had unreasonably delayed in locating the father and did not act quickly to establish paternity, and the court had focused only on the child's best interests, overlooking the father's interests. (*Id.* at pp. 542-544.)

Miguel's situation is different. The court appointed counsel at his first appearance in court and, although there was delay in paternity testing, there was no showing the Agency caused the delay. Also, Miguel had always understood he was Leah's father, yet he made no effort to establish a relationship with her. *In re Julia U., supra*, 64 Cal.App.4th 532 does not support Miguel's arguments.

DISPOSITION

The order is affirmed.

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O'ROURKE, J.

WE CONCUR:

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McCONNELL, P. J.

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McDONALD, J.